In the affidavit supporting this application Cheong Sow Ying swore that the "application by my former solicitors, Messrs. John G. Campbell & Co., upon which the said two orders were made was irregular as neither I myself nor the estate of the said Wong Khim Yong deceased has any interest in the estate of the said Wong Yoon Fee deceased."

In these circumstances I do not see why the estate should be burdened with these costs.

Mr. Burke has argued that there is here only a technicality and that if Cheong Sow Ying had originally based her application on her guardianship of her infant sons the Court would have made the same orders which it did make.

The application for maintenance for herself and her daughters, however, could not have properly been made in these proceedings on behalf of the infant sons. As to the others I might be inclined to allow the costs if I were satisfied that the Orders obtained were necessary for the protection of the estate and beneficial to it.

I am not satisfied of this. From beginning to end the accusations of maladministration have been aimed at the first defendant trustee only and he has only recently taken part in the proceedings. From beginning to end the second defendant trustee has admitted the maladministration by the first trustee and has apparently done all in his power to clear up the mess. He is still a trustee although the first defendant has been removed and replaced at any rate for the time being. This action for the removal of the first defendant could have been taken at the beginning and would I think have been the only action necessary (except the obtaining of accounts from the first defendant). It does not appear to me that the appointment of a Receiver or any of the other steps taken by Cheong Sow Ying during her conduct of the proceedings as administratrix of her husband's estate, were of any real benefit to this estate.

If, as Mr. Burke has suggested in argument, the estate of her husband (who had only a life interest in the present estate, who survived the testator by a few months only and who is alleged to owe the testator's estate over $9,000) should be shown, on a final account being taken, to be in fact owed any sum by this estate then Messrs. J. G. Campbell & Co. can look to that share for their fees and I am prepared to authorize the present trustees to pay the amount (if any) eventually found to be owing to Wong Khim Yong's estate to Messrs. J. G. Campbell & Co. direct as solicitors for the administratrix of Wong Khim Yong.

Beyond that I am not prepared to direct the present trustees to burden the estate and to lessen the share in it of other beneficiaries by paying out of it costs incurred by a person who has admitted on oath that her applications were irregular and that she had no interest in this estate, and who has herself obtained from the Court an order discharging the orders made on those irregular applications and under which alone she could be entitled to claim her costs as of right.

I do not understand in any case why those costs should amount to nearly $6,000 but that will be a matter for the Registrar who will doubtless scrutinize the bill carefully if and when it comes before him for taxation.

On the present summons therefore my decision is that Cheong Sow Ying is not entitled to any costs out of the estate incurred by her previous to the Order of Court dated the 1st day of August 1936 but that the trustees if and when it is finally determined that any sum is due from the estate to the estate of Wong Khim Yong deceased may pay that sum direct to Messrs. J. G. Campbell & Co. on behalf of the administratrix of the latter estate.

As to the costs of this application the costs of the present trustees will be paid out of the estate. The costs of any other parties who were represented may be paid by the trustees to the solicitors of those parties out of any monies that may become due out of the estate to those parties.

Order accordingly.

Solicitors for Trustees—*Mallal & Namazie.*

Solicitors for Cheong Sow Ying—*John G. Campbell & Co.*

Solicitors for Wong Kai Woon & Wong Kai Yat (Infants)—*Mendis & Ahlip.*

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
February 10, 1938.

IN RE ABDUL SALAM DECEASED.
ABDUL RAZAK v. KASI MOHAMED SHIRAZIL ANWAR.

[SINGAPORE ORIGINATING SUMMONS No. 7 of 1938.]

Conflict of Laws—Share in proceeds of sale of Residuary Estate—Moveables or immoveables —Whether lex situs or lex domicilii applicable on intestacy of beneficiary—Infant—Majority according to lex domicilii—Payment of share—Administrator and Infant Beneficiary—Advancement out of Capital.

A share in the proceeds of sale of residue is moveable property even though such residue consists principally of immoveable property which though held on trust for sale has not yet been sold. Where the person entitled to such share dies intestate domiciled in a foreign country, the share devolves according to the *lex domicilii.*

An infant having a foreign domicile may give a good discharge for his share to the administrator of the estate, if according to the law of his domicile he is of full age.

An advancement out of capital of a female infant's share for the purpose of her intended marriage authorised.

ORIGINATING SUMMONS.

Abdul Odood, the father of Abdul Salam, by his Will bequeathed to Abdul Salam a share in the nett proceeds of sale of his residuary estate, and he also specifically devised to him certain immoveable property situate at Albert Street, Singapore.

Prior to his death Abdul Odood had caused certain immoveable property situate at Klang Lane, Singapore, to be conveyed to Abdul Salam in fee simple.

Abdul Odood predeceased Abdul Salam.

Abdul Salam died intestate on the 15th day of August, 1919. He was a Mohamedan, domiciled in India. He left a widow a son Anwar (the Defendant) and a daughter Maksura, all of whom were also domiciled in India.

At the time of Abdul Salam's death the residuary estate of his father consisted almost entirely of immoveable property in Singapore which was still unsold. The immoveable property at Albert Street was also still unsold and the land at Klang Lane was still vested in Abdul Salam.

The widow died in November, 1926.

The Plaintiff obtained Letters of Administration to Abdul Salam's estate in Singapore on the 18th November 1927.

The Defendant Anwar at the time of these proceedings was over 18 but below 21 years of age. The daughter Maksura was an infant about to be married.

After he obtained the Letters of Administration the Plaintiff sold the property at Klang Lane. The trustees of the Will of Abdul Odood then claimed that the property at Klang Lane belonged to the testator Abdul Odood and was held by the deceased Abdul Salam as nominee of and in trust for the testator. This claim was subsequently settled by a payment to the trustees of a portion of the proceeds of sale, the settlement being made with the approval of the Court. The balance of the proceeds of sale was retained by the Plaintiff as part of Abdul Salam's estate.

In these circumstances the Plaintiff took out a summons to have the following questions determined and for directions:—

1. Whether (having regard to the fact that the Intestate died in the year 1919) moneys representing the intestate's share as one of the residuary legatees in the proceeds of sale of immoveable property of the Intestate's father under his Will ought to be divided amongst the beneficiaries entitled to share in the Intestate's estate—
   A. In accordance with the law of the Intestate's domicile viz. Mohamedan Law—or
   B. In accordance with the law of the Straits Settlements.
2. Whether the Intestate's immoveable property in Singapore and the rents and profits thereof is divisible among the beneficiaries entitled to share in his estate:—
   A. According to the law of the Straits Settlements—
   or
   B. According to Mohamedan Law.
3. As to the balance of the proceeds of sale of certain immoveable property situate at Klang Lane, Singapore, which was at the time of the Intestate's death vested in the Intestate in fee simple but after his death was claimed by the Trustees of his father's estate as belonging to the father's estate, which claim was compromised by payment to the Trustees of his father's estate of a portion of the proceeds of sale, whether such balance is to be treated as moveable or immoveable property for the purpose of distribution, and distributed in accordance with the answer to Question 1 or 2.
4. Whether the Intestate's son, Kazi Mohamed Shirazil Anwar, who is now over eighteen years of age and is of full age according to the law of his domicile, can give a good discharge to the Administrator for his share in the Intestate's estate.
5. For a direction that the Administrator be at liberty to expend out of the share of the Intestate's infant daughter a sum not exceeding $2,000 for her marriage expenses and purchase of suitable jewellery and provision of a dowry in view of her intended marriage.
6. For a direction as to whether the said Maksura ought to be represented other than by the applicant in these proceedings.

Cobbett for the Plaintiff referred to *In re Schnapper*, (1928) Ch. 420, *Williams'* Executors and Administrators 11th Edition 1150, *Lloyd* v. *Cocker*, 27 Beav. 645, 54 E.R. 256, *Amir Ali's* Mohamedan Law (Introduction).

Koek for the Defendant cited the following cases *Lord Sudeley* vs. *Attorney-General* 1897, A.C.11; *In re Lynes Settlement Trusts*, (1919) 1 Ch. 80; *In re Anziani*, (1930) 1 Ch. 407; *S. A. M. Muthukaruppan Chettiar* vs. *Onan bin Rajeedin, Singapore*, Suit No. 688 of 1907 (unreported).

Green for the infant daughter cited *In re Berchtold,* (1923) 1 Ch. 192; *Murray Champernowne,* (1901) 2 I.R. 232.

Koek in reply, distinguished *in re. Berchtold, (supra.)*

TERRELL, J.—This Originating Summons raises various questions in the matter of the administration of the estate of Abdul Salam deceased (hereinafter called the intestate). Such estate may be divided into three categories:—

(1) Property at Albert Street, Singapore, specificially devised to the intestate under the will of his father Kazi Abdul Odood dated the 30th November 1912.
(2) A one-seventh share in the residuary estate of his father.
(3) A piece of land at Klang Road, Singapore, which was transferred to the intestate by his father shortly before the latter's death, and which was, after the death of the intestate, the subject of claims by persons interested in the father's estate. Such claims were subsequently compromised with the sanction of the Court.

Although the affidavit in support of the application is silent on the point, I am informed that Kazi Abdul Odood died in 1912. The intestate died on the 15th August 1919 domiciled in Calcutta.

The crucial date is that of the intestate's death, and the question arises whether the above properties, or any of them, should be treated as movables or immovables as on that date. If they were immovables the *lex situs* would apply, and under sections 27 and 29 of Ordinance No. 26 (Mohammadans) in the 1920 Revised Edition of the laws of the Straits Settlements, the widow and children of the intestate would be entitled to such distributive shares as they would have been entitled to by English law, under the rules for the distribution of intestates' estates in the Colony. If, on the other hand, the above properties or any of them should be treated as movables, they will be distributable according to the *lex domicilii* which, it is agreed, was Mohamadan law.

As regards items (1) and (3) there is little difficulty. At the intestate's death such properties were in fact immovables belonging to the intestate, and must devolve in accordance with the provisions of the Ordinance above referred to.

As regards the share in the residuary estate, different considerations arise. Under the will of the father the residue was bequeathed to trustees upon trust for conversion, for payment of testamentary expenses and debts, and upon trust "to stand possessed of the residue of the said moneys upon trust for all my children who shall attain the age of 21 years or marry in equal shares." Under this provision the intestate became entitled to a vested interest in the residuary estate bequeathed by his father.

The affidavit is silent as to the number of children who took vested interests and as to whether the debts and testamentary expenses have been paid, but I am informed that the intestate had a vested interest in a one-seventh share in the residuary estate and I presume that the testamentary expenses and debts had been paid by the year 1919. The trusts for conversion had apparently not been carried out, since the affidavit states that the residuary estate in 1919 consisted of immovable property. I was informed, however, from the bar that the statement is not accurate and that at the date of death not the whole, but a large proportion, of the residuary estate consisted of immovable property, though what proportion was not stated. I have mentioned these matters as some of them are extremely relevant, and my judgment is based on the assumption that the facts as set out above are correct.

I take it therefore that in 1919 the father's residuary estate was still in the hands of the trustees of the father's will and consisted partly of movable, but mostly of immovable, property, that it had not been distributed or even allocated to the several residuary legatees.

This being the case, the only question for determination is, what was the nature of the intestate's interest?

The point at issue is not whether the residuary estate which passed under Abdul Odood's will was realty or personalty, since by virtue of the provisions of section 35 of the Conveyancing and Law of Property Ordinance of 1886, which then applied, as under the present Ordinance, and for purposes of transmission and devolution is treated as personalty. The distinction is between movable and immovable property, and there can be no doubt that the land which formed part of Abdul Odood's estate was immovable property. But the share in the residue which passed to the intestate is not necessarily the same. The nature of an undivided share in residue is very clearly explained by Lord Davey in the case of *Lord Sudeley* v. *The Attorney-General,* 1897, A.C. p.11 at p.21, where he says:—

> "In the events which have happened the residuary estate of the original testator is divisible into sixty-four shares, of which the present appellants are entitled to sixteen. What, then, are the rights of the appellants? Their right, and the only right which they could enforce adversely, is to have the administration completed and the residuary estate ascertained and realized, either wholly or so far as may be

necessary for the purpose, and to have one-fourth of the proceeds paid to them. The residuary legatees may no doubt agree between themselves to take any portion of the estate in specie, or an appropriation may be made of particular portions of the estate in satisfaction of any share by any fair agreement between the executors and the residuary legatees, or a scheme of division of that kind might no doubt be made by the executors either with the sanction of the Court, or possibly at their own risk. In this case there has been no election to take the estate or any portion of it in specie, nor has there been any appropriation by the executors; and, indeed, at the time of Mrs. Tollemache's death the time had not arrived for any such election or appropriation. Mr. Channell endeavoured to argue that a trust fund had 'practically' (I think that was the expression) been constituted of these colonial mortgages in Mrs. Tollemache's life-time, and that she at the time of her death was entitled to an undivided share of that trust fund. It is sufficient answer to that argument to say that (on the statements in the answer) no trust fund had been constituted or could have been constituted until the residue had been ascertained, and it is unnecessary to consider what would have been the case if these mortgages had formed part of a duly constituted trust fund vested in trustees for the lady."

The case cited goes a great deal further than merely to decide that probate duty was payable on the appellant, a share in certain mortgages in New Zealand. The judgments in the House of Lords constitute a decision as to the nature of an undivided residuary bequest, and it appears to me that the principle therein laid down must necessarily apply to all residuary bequests.

In the case before the Court the share of the intestate had never been ascertained. It cannot be maintained that he had an indefeasible right to one-seventh of each portion of the immovable property and one-seventh of the movable property. All he had was a right to have the residuary estate ascertained and realised and to have one-seventh of the proceeds paid to him. Nor can it be suggested that the intestate's interest was immovable property *pro rata*. That argument was advanced unsuccessfully in *In re Anziani*, 1930, 1 Ch. p. 407. In that case a sum of £50,000 had to be raised out of settled funds consisting partly of real estate and partly of personal estate. As Maugham J. points out at p.423:—

"In the present case the appointees of the sum of £50,000 have no right whatever to the land assigned. The right of the appointees is merely to require the trustees to raise the sum in question, and the sum might very well be raised without selling the freehold or the leasehold estate. Accordingly in my view there is no ground for saying that an appointee of a sum of money, i.e. the £50,000, or a part thereof, in such circumstances as exist here, is a person entitled to immovable property. I think that the right is a right to call upon the trustees to pay the amount in question, and that is a chose in action which must be treated as possessing the character of a movable."

It appears to me that the right of a residuary legatee in an undivided residue is of exactly the same character, and all that he possesses is a chose in action.

Different considerations might arise, as indicated by Lord Davey in *Lord Sudeley's* case, if the trustees and executors had allocated any particular part of the residue to the persons entitled thereto, but nothing of the sort took place. If such allocation had taken place the decision in *In re Berchtold*, 1923, 1 Ch., p.192, might have been applicable. In that case Count Richard Berchtold had settled some property in Birmingham on his son Count Nicholas upon trusts for sale and conversion, subject to the payment of an annuity to Count Richard's wife. The property had not been sold, and passed to Count Nicholas unconverted subject to the payment of the annuity. In 1913 both Count Nicholas and his mother died. Count Nicholas died intestate, and the property passed to Count Nicholas' son Count Antoine. Both Count Nicholas and Count Antoine were domiciled in Hungary. In 1915 Count Antoine was killed in action, and it was held that the Birmingham property was immovable property, and passed under the law of England first on Count Nicholas' death as to 1/3rd to his widow and as to 2/3rds to his only son Count Antoine, and on Count Antoine's death, the whole of his 2/3rds passed to his mother, Count Nicholas' widow, as his sole next of kin. In that case the equitable doctrine of conversion had no application. Count Nicholas was entitled to take the property to which he was solely entitled unconverted, and the 2/3rds interest in fact descended to Count Antoine unconverted. In these circumstances both Count Nicholas and Count Antoine had an indefeasible right to specific immovable property. The intestate, however, in the present case, as I have explained above, never had any such right. In my opinion therefore the case of *In re Berchtold* has no application to the facts of the case now before the Court. The intestate's share in the residuary estate of Abdul Odood will accordingly be divisible according to Mohamedan law.

As regards the remaining questions before the Court, I think, on the authority of *In re*

Schnapper, (1928) Ch. p. 420, that the intestate's son Kazi Mohamed Shirazil Anwar, who is over the age of 18 years, can give a good discharge to the administrator for his share in the intestate's estate.

I also direct that the administrator be at liberty to expend out of the share of the intestate's infant daughter Maksura a sum not exceeding $2,000 for her marriage expenses and for the purchase of suitable jewelry and for the provision of a dowry in view of her intended marriage.

The costs of all parties will be taxed as between solicitor and client and paid out of the intestate estate.

Order accordingly.

Solicitors for the Plaintiff—*Rodyk & Davidson.*

Solicitors for the Defendant—*Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

January 21, 1938.

RE W. S. BEE & CO.

[SINGAPORE BANKRUPTCIES Nos. 59 & 60 of 1937.]

Bankruptcy Costs—R. 76(3)—General reg. 1 of R. VII of "Rules regarding Solicitors' costs in bankruptcy."

General reg. 1 of R. VII of the "Rules regulating solicitors' costs in bankruptcy" in the Appendix to the Bankruptcy Rules (formerly General reg. 1 of r. VII in Part II of the Appendix to the Bankruptcy Rules) is a governing provision for all costs in bankruptcy proceedings and the costs payable in such proceedings are to be allowed on the lower scale contained in Schedule C to the Rules of the Supreme Court 1934 save as in the scale provided in the Rules as to costs in the Appendix to the Bankruptcy Rules.

ADJOURNED MOTION.

Koek, for the applicant on the motion.

E. B. Williams, Official Assignee, in person.

Cur. Adv. Vult.

MCELWAINE, C. J.—I allowed the appeal in this matter against the Official Assignee's rejection of proofs.

Mr. Koek for the successful appellant asked that he should be awarded costs on the Supreme Court Higher scale. He referred to Bankruptcy r. 76(3). The Official Assignee on the other hand argued that the highest costs that should be awarded should be such as accord with the Supreme Court lower scale. He referred me to Part II of the Appendix printed with the Bankruptcy rules, particularly "VII General Regulations 1" at page 233.*

Bankruptcy r. 76 appears to occasion difficulty and I gather that sub-r. 1 at any rate has long been regarded as a dead letter. That subrule as I understand it related to ordinary bankruptcy costs and it prescribes that the fees, percentages and costs should be based on the English scale on the basis of one dollar being taken as the half of the common solicitors' fee of 6/8. In 1887 and 1888 the dollar rate was over 3/-.

The bankruptcy rules at present in force were made in 1897. R. 76 is identical with r. 76 of the rules of 1888 made under the Ordinance of 1888.

The 1888 rules were made by the Governor in Council as the rule making authority under ss. 114 and 115 of the Ordinance as it then stood, was the Governor in Council. These sections correspond with ss. 120 and 121 of the Bankruptcy Ordinance (Chapter 45). No special bankruptcy costs rules appear to have been made in 1888 so by virtue of r. 76, sub-r. 1 the English tariff applied, modified, as I have pointed out, by the special sterling equivalent of the dollar prescribed for the conversion of the English sums into Colony money.

The scale of Solicitors' costs in England in 1888 may be found in *Lee and Wace's* Law & Practice in Bankruptcy 1887 Ed. at page 784.

The rules published as Part II of the Appendix to the Bankruptcy Rules 1897 were made in 1894 by the Governor in Council under ss. 114 and 115 of the Ordinance. They appear to follow closely the scale set out in *Lee and Wace.*

These rules of 1894 appear to me to have had the effect of repealing the whole of r. 76 of the rules of 1888.

The Bankruptcy (Amendment) Ordinance of 1896 amended s. 114 of the Ordinance of 1888 by empowering the Judges of the Supreme Court with the approval of the Governor in Council to make the general rules under s. 114.

It is not obvious to me what power the Judges had in 1897 to make r. 76, a rule which came under s. 115 and not under s. 114, and it seems to me to be not improbable that the present r. 76 was copied *per incuriam* from the rules of 1888 when the rules of 1897 were made.

An appeal against a rejection of a proof is clearly a proceeding under the Bankruptcy Ordinance and the rules and in such proceedings it appears to me that costs are governed by the Governor in Council's rules made under s. 115 in

---

* His Lordship was referring to "The Bankruptcy Ordinance, 1888, and the rules thereunder" compiled by A. de Mello printed in 1916, in which the scale of bankruptcy costs was contained in Part II of the Appendix. This scale and the rules relating thereto are now reprinted in the Appendix to the Bankruptcy Rules 1897, under the heading, Rules made by His Excellency the Governor in Council under ss. 114 and 115 of "The Bankruptcy Ordinance, 1858" regarding Solicitors' Costs in Bankruptcy.